

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Paul Billings,	)	
	)	
Plaintiff,	)	<b>ORDER ADOPTING</b>
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
The North Dakota State Penitentiary,	)	
and the NDDOCR,	)	Case No. 1:07-cv-066
	)	
Defendants.	)	

---

The plaintiff, Paul Billings, filed this pro se civil rights action under 42 U.S.C. § 1983 on October 11, 2007. Magistrate Judge Charles S. Miller, Jr. conducted an initial review of Billings' complaint as mandated by 28 U.S.C. § 1915A. On October 26, 2007, Judge Miller submitted a Report and Recommendation. Judge Miller recommended that Billings' complaint be dismissed without prejudice for failure to state cognizable claims under 42 U.S.C. § 1983. Billings was then given fifteen (15) days to file an objection to the Report and Recommendation. On January 23, 2008, Billings filed an objection to the Report and Recommendations. See Docket No. 7.

Billings' objection contains numerous citations to authority that there is a duty on prison officials to protect inmates. When Billings' objection is read in conjunction with the facts on record and Billings' pro se pleading is construed liberally, the Court finds that Billings alleges a violation of a federal constitutional or statutory right and as such has stated a cognizable claim. See Erickson v. Pardus, \_\_\_ U.S. \_\_\_, 127 S. Ct. 2197, 2200 (2007) (stating that the pleading need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.").

However, Billings has not filed an amended complaint as was recommended and, more important, he has failed to name a defendant(s) who may be sued under 42 U.S.C. § 1983 as was also recommended in the Report and Recommendation by Judge Miller. In addition, Billings has

made no demand for relief that may be ordered by the Court. The Court finds that, despite stating a cognizable claim, Billings complaint must be dismissed for failure to name a defendant who may be sued under 42 U.S.C. § 1983 and because the Court lacks the authority to provide the relief requested.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the conclusion and recommendation contained in the Report and Recommendation (Docket No. 4). As a result, Billings' application to proceed *in forma pauperis* (Docket No. 2) is **DENIED**, and Billings' claims are **DISMISSED** without prejudice. However, the Court would strongly recommend that Mr. Billings promptly contact an attorney and seek legal advice and assistance concerning his federal rights and remedies under 42 U.S.C. § 1983.

**IT IS SO ORDERED.**

Dated this 28th day of January, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge  
United States District Court